



**Uniformed Services Employment and
Reemployment Rights Act
(USERRA)**

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Employment Rights **of the National Guard &** **Reserve**

The protection of the United States depends on a strong military. Today, our National Guard and Reserves comprise a significant portion of our armed services. These individuals come from our civilian population, and are employed by a multitude of businesses.

The duties of our Guardsmen and Reservists are no longer considered to be a job consisting of one weekend a month and two weeks a year. They are vital to the safety and security of America, and they have been called up by our President and our Governor in these times of need. Understandably their absence from their jobs can create a hardship on their employers and co-employees.

The Uniformed Services Employment and Reemployment Rights Act (USERRA), is codified in Title 38, United States Code, Sections 4301 through 4333. This Act applies to all employers, and intends to minimize the disruption that such service may cause both employees and employers. It also prohibits discrimination against employees because of their service to our country. The Act mandates that any National Guard or Reservists may not be denied initial employment, reemployment upon return from service, promotion, or any benefit of employment on the basis of his/her membership or obligation in the uniformed service. Thus, employers need to be aware of their responsibilities and duties with regard to employees who have been activated.

I hope that this pamphlet on USERRA will give you a better understanding as to what your rights and obligations are if you are either a Guardsman or Reservist, or if you are the employer of such an individual.

Because these men and women of the Guard and Reserve serve voluntarily in an honorable and vital profession, they are "Heros," deserving the full support of every employer in America. To you, the employers, I say thank you for your sacrifice to your country. You are true patriots during this time of need.

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Hawaii Fact and Figures

Major Installations

Army

- Fort Shafter
- Schofield Barracks
- Kunia Station
- Pohukuloa Training Area
- Tripler Army Medical Center

Navy & Marine Corps

- Camp H.M. Smith
- Kaneohe MC Air Station
- Pearl Harbor NAS
- Barbers Point NAS

Air Force

- Hickam AFB
- Wheeler AFB

Coast Guard

- Fourteenth District
- Group Honolulu
- Marine Safety Office Honolulu
- Air Station Barbers Point

Personnel Totals

• Army	14,692
• Navy & Marine Corps	13,179
• Air Force	4,483
• Coast Guard	<u>1,170</u>
• Active Duty Military	32,354
• Reserve and National Guard	<u>12,043</u>
• Total Personnel	45,567

NOTE: Numbers do not reflect satellite stations, installations less than 1,000 personnel assigned member's spouse and dependents. Those total about 60,000. Therefore the total is about **105,567** people that reside in Hawaii and supports our economy and way of life.

Disclaimer

This pamphlet is intended to be a non-technical resource for informational purposes only. Its contents are not legally binding nor should it be considered as a substitute for the language of the actual statute or the official USERRA Handbook.

USERRA

The **Uniformed Services Employment and Reemployment Rights Act** (USERRA) was enacted to ensure that members of the uniformed services are entitled to return to their civilian employment upon completion of their service. They should be reinstated with the seniority, status, and rate of pay they would have obtained had they remained continuously employed by their civilian employer. The law also protects individuals from discrimination in hiring, promotion, and retention on the basis of present and future membership in the armed services.

USERRA is a follow up to the Veterans Reemployment Rights (VRR). The Soldier and Sailors Civil Relief Act (SSCRA) and the Family and Medical Leave Act (FMLA) go further to protect our service members and is used in conjunction with USERRA.

Congress provided clear protection for all members of the uniformed services (including non-career National Guard and Reserve members, as well as active duty personnel). On October 13, 1994, Congress enacted Pub. Law 103-353, The Uniformed Services Employment and Reemployment Rights Act (USERRA), Chapter 43 of Title 38, U.S. code.

USERRA defines the employment and reemployment rights of all uniformed service members; the law is administered and enforced by the Department of Labor Veterans' Employment and Training Service (DoL/VETS)

The Department of Labor is the enforcement authority for USERRA, and it processes all formal complaints of violations of the law.

Major sections of the law:

- Coverage now encompasses the Public Health Service, the Coast Guard, and others designated by the President in time of war or emergency;

- A 5-year limit (with some exceptions) is imposed on the cumulative length of time a person may serve in the military and remain eligible for reemployment rights with the pre-service employer; this does not include scheduled drills and applies to per employer.
- An individual is required to give advance notice either written or verbal to their employer prior to departing for military service;
- Time limits have been set for reporting back to work, based on the length of time in the uniformed service, not the type of service, and requires documentation of such service, if available;
- Employer provided health insurance continues **at the service member's request** for an 18-month period, with payment of up to 102% of the full premium by the service member;
- An employee's military service is **not to be** considered a break in employment for pension benefit purposes, and provides that the person's military service must be considered service with an employer for vesting and benefit accrual purposes;
- The U.S. Department of Labor Veterans' Employment and Training Service (VETS) shall assist all employees, including federal government workers.

Important changes in military leave of absence management include:

- An employee no longer requests permission to be absent for military leave but **rather provides notification of pending military service**.
- There is no longer any differentiation between voluntary and involuntary service
- An employee **cannot** be required to use earned vacation or similar leave days for military leave of absence

- Military service will not be counted as time away from the employer for retirement purposes (Federal employees should review the Code of Federal Regulations, series 5 CFR 353.201-210 for details related to their employment.)

USERRA was significantly updated in 1996 and 1998. It provides reemployment protection and other benefits for veterans and employees who perform military service. It clarifies the rights and responsibilities of National Guard and Reserve members, as well as their civilian employers. It applies almost universally to all employers - including the federal government - regardless of the size of their business.

Federal law. No law, policy, practices, etc. that would diminish the rights established in USERRA will take precedence over the provisions of USERRA. In contrast, USERRA does not supersede, nullify, or diminish any federal or state law, or company policy, union agreement, practice or contract that provides greater rights or benefits to service members.

Applicability. USERRA applies to all employers in the United States, **regardless of the size of their business**. It protects part-time positions, unless the employment is for a brief, non-recurring period and is not expected to last indefinitely or for a significant period. USERRA does not protect independent contractors and others considered to be self-employed.

Definitions. Section 4303 contains a number of definitions that helps clarify the law when applying to a civilian employment rights scenario.

- The law protects persons who perform **service** in the uniformed services. "Service" includes active or inactive duty under **federal** authority.
- **State** call-ups of members of the Army or Air National Guard are not protected under USERRA, because the term "employer," as it applies to National Guard technicians, refers to the Adjutant General of the state.

Therefore, National Guard technicians on other than active or inactive duty for training are considered to be

state employees and are not afforded protection under USERRA.

- "Uniformed services" encompasses the active and Reserve components of the Armed Forces, the Army and Air National Guard, the Commissioned Corps of the Public Health Service, and any other category of persons designated by the President in time of war or emergency.

Discrimination. USERRA prohibits discrimination in hiring, retention, promotions, or other benefits of employment against a person because that person "is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a uniformed service...." Employers are prohibited from retaliation against anyone who exercises USERRA rights or anyone who assists in the exercise of those rights by either testifying or participating in an investigation, even if that person has no military connection.

Eligibility. To qualify for reemployment rights following military service, you must meet the following five eligibility criteria:

- You must have left a civilian job;
- You must have given notice that you were leaving to perform military service;
- The cumulative period of service must not have exceeded five years (there are exceptions);
- You must have been released from service under honorable or general conditions;
- You must have reported back to work or applied for reemployment within time constraints prescribed by law.

Notice. Under USERRA, you (or an officer from your command) must give your employer advance notice (either written or verbal) of scheduled/upcoming military service of any type. If not you will not be eligible for reemployment protection following the period of military service. The only **exceptions** to the notification requirement would be if the giving of notice is precluded by military necessity (e.g. a classified recall) or if it is otherwise impossible or unreasonable to give notice. These exceptions to the notice requirement are expected to be very rare. The best course of action is to give as much advance notice to your employer as possible.

Five-year limit. USERRA sets a cumulative limit of 5-years on the amount of military leave you can perform and retain reemployment rights with a given employer. If you get a new employer, you get a new 5-year limit.

Exceptions to the 5-year limit:

- If you are unable to obtain release or if service is required to complete an initial period of obligated service, that time of service is exempt (examples: An initial enlistment may last more than 5 years, such as for nuclear power training. In this case, an employee retains reinstatement rights with the employer.
- If an employee was hospitalized for or is convalescing from an illness or injury incurred in, or aggravated during military service, the limit may be extended up to an additional 2 years.)
- Drills (inactive duty training), annual training, involuntary active duty extensions (including training certified as necessary by your service), and recalls due to a war or national emergency are not counted in the 5-year cumulative total.

USERRA establishes that reemployment protection does not depend on the timing, frequency, duration, or nature of an individual's service. USERRA states that while an individual is performing military service; he or she is deemed to be on a furlough or leave of absence and is entitled to the non-seniority

rights accorded other individuals on nonmilitary leaves of absence.

NOTE: If you were employed by the same employer both before and after USERRA's effective date of December 12, 1994, military service that you performed under the previous law will **count against** the USERRA 5-year limit.

Reemployment procedures. The type of military duty performed doesn't relate to getting your job back. Reinstatement is strictly based on the duration of the uniformed service.

- For periods of military service 30 days or less, you must report back to work at the next regularly scheduled shift on the day following release from the military, albeit safe travel home, and eight hours of rest.
- Longer periods of services, reemployment is not necessarily immediate, however should be within a matter of days or at most a few weeks. For a period of 31-180 days of service, you must apply for reemployment within 14 days following release.
- Period of service of 181 days or more, you must apply for reemployment within 90 days after release.
- When applying for reemployment, you should identify yourself, explain that you left that employer to perform military service, that you have completed the service and want to be reinstated. Failure to do so within the specified time limits through your own fault does not necessarily forfeit your reemployment rights, but makes you subject to the employer's rules concerning unauthorized absence from work.

Reemployment position. Employees returning from military service must be reemployed in the job that they would have attained had they not been absent for military service and with the same seniority, status and pay, as well as other rights and benefits determined by seniority. Reasonable efforts must be made to enable returning employees to refresh or upgrade

their skills to enable them to qualify for reemployment. If refresher training is not successful, USERRA states that the employee must be reinstated in a position that most nearly approximates the originally held position. Employees who are disabled (temporarily or permanently) due to military service must also be accommodated in a position most nearly approximating their original position.

Reemployment entitlements. Upon completion of military service and you meet the eligibility criteria outlined above, you have several specific entitlements. Such as:

- Prompt reemployment.
- Seniority, seniority-related benefits (including pension), status, and rate of pay as if you were continuously employed during the military absence.
- Immediate reinstatement of health insurance for you and previously covered dependents, with no waiting period and no exclusion of preexisting conditions, except conditions determined by the Government to be service-connected.
- Training or retraining by your employer if that is necessary to qualify you for the reemployment.
- If you were disabled while on military duty, or a disability is aggravated by military service, your employer must make reasonable efforts to accommodate the disability. If your period of service was 181 days or more, you are protected from discharge, except for cause, for one year. If the service was for 31-180 days, the period of protection from discharge is 180 days.

Documentation. Completion of service of 31 days or more be prepared to provide documentation to the employer.

- The documentation establishes that your application for reemployment was timely;

- You have not exceeded the cumulative 5-year limit;
- You were discharged under "honorable or general" conditions (i.e., you did not receive a punitive type of discharge). If the documentation is not readily available, or doesn't exist, the employer can't deny you reemployment, although if documentation later becomes available and shows you did not qualify for reemployment, the employer may immediately terminate you. Legal forms of documentation could include a DD-214, endorsed orders, or a letter from your command.

Health Care. If the period of service is 30 days or less, you pay the normal employee cost, if any, for the coverage. You may elect to continue employer-provided health insurance for a period up to the first 18 months of your military service. However, if the service is 31 days or more, you **could be** required to pay up to 102 % of the total premium. You are also entitled to any non-seniority-related benefits that the employer offers to employees on nonmilitary leaves of absence (e.g. jury duty).

Pensions. All pension plans in which benefits are earned for length of service are protected.

Vacations. While on active duty, you may choose to use any personal vacation you have earned with your employer. The employer cannot require you to use vacation. You do not earn civilian vacation during a period of military service unless your employer provides this as a benefit for employees on a nonmilitary, non-pay leave of absence of similar duration.

Assistance and enforcement. Members of a Reserve component that experiences employment problems because of your military obligations should first notify your command. Usually a commander or legal officer can provide prompt and effective assistance in resolving disagreements between you and your civilian employer. If local efforts fail, contact Ombudsmen Services at ESGR National Headquarters (telephone: 1-800-336-4590 or DSN 426-1390/91; Web site - www.esgr.org.) Ombudsmen are trained to provide information and informal mediation assistance. They will help your

employer better understand the law and how it applies to them. Situations that are complex or cannot be resolved informally will be immediately referred to the U.S. Department of Labor Veterans' Employment and Training Service (VETS), or you can contact them at your local listing.

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USERRA Provisions

Protection of accrual rights: Employee pension benefit plans and profit sharing plans continue for the duration of active military duty (not exceeding five years) as if the employee was never away and counts as service with the employer, therefore benefits must accrue accordingly.

Protection of contributions: Plans with contribution features such as a 401(k) plan, the employee has the right to make up any missed contributions that would have otherwise been made if not for active military duty. The employee has three times the duration of military service (up to five years) to make up these contributions after reemployment. There is no waiting period for the reemployed employee to begin participation in the company retirement plan.

Protection of company match contributions: If the plan provides for matching contributions, the employer must make any matching contributions relating to the employee contributions during the make-up period. Earnings and forfeitures are not included in determining the make-up benefits.

Protection of loan provisions: Plans are permitted – but not required – to suspend participant loan payments during military service period without violating loan requirements under IRC §72. The Summary Plan Document (SPD) for the qualified plan may include language relating to the authorization of participant loans. If so, the employer should modify the SPD to include USERRA loan provisions under these circumstances. As "interested parties," the employee should also retain the right to take out a loan during their service period.

Protection of vesting rights: The duration of active military duty (not exceeding five years) also counts toward the employee's vesting schedule relative to the company retirement plan. The employee must be treated as **not** having a break in service.

USERRA applies to **all** pension benefit plans, but are not limited to qualified plans or those subject to the Employee Retirement Income Security Act (ERISA). (Bonus plans, severance plans and stock option plans appear to be excluded; these would be considered to be benefits protected by other guidelines including seniority.)

Employee's compensation during military service is based on the rate of pay that would have been received if not for the military absence. Upon reemployment, employee contributions during the make up period are not to be included as part of the plan's nondiscrimination testing. These contributions are subject to the general plan contribution and deduction limitations relative to the year for which they are made rather than the year in which they are made.

Employers must provide military leave rights regardless of any other policy they may have established. Other protected employee benefits must also be available to military reserve personnel, including employment protection and nondiscrimination, health care coverage, disability and life insurance. Sponsors should consult with their providers regarding these types of benefit provisions established under USERRA.

Making It Easier For Civilian Employers Of Those Who Serve In The National Guard And Reserve

Each employer plays an important role in maintaining a strong national defense. The National Guard and Reserve are an integral part of our defense forces. Many of the men and women serving in our armed forces are members of the National Guard and Reserve. Their performance must meet the same standards as their active duty counterparts. Because they do not serve full-time, the cost to the government is far less. As an employer, you are vital to empowering your employees who are members of the National Guard and Reserve to serve their country. Your active support and encouragement are essential to their success. Here are some ways how can help them protect our nation:

- Educate yourself and the company more about the role of the National Guard and Reserve. Become a dynamic leader by attending open houses and public functions at local military units. Speak with military and civilian leaders in your community about the National Guard and Reserve. Learn more about your employees on what they do and how they fit into the "big picture" of national defense.
- Get to know your employees' military commanders and supervisors. Ask them to provide you with advance notice of your employee's annual military training schedule and work out conflicts as early as possible, alternative arrangements may be possible. Remember they are human too therefore they are not unapproachable.
- Review your personnel policies to see how they accommodate and support participation in the National Guard or Reserve. For example, are there provisions for military leave of absence (exclusive of earned vacation time); are job opportunities and benefits equivalent to those of other employees? Get your entire management team to promote your support of the National Guard and Reserve. Explain your position and address problems or concerns that may arise.

- Encourage employee participation in the National Guard and Reserve. Recognize and publicize their dedication and commitment to your business and the nation. Apply the training they receive from military duty. You'll be surprised to realize how much it enhances their job performance and value to your organization.
- Understand that there may be occasional conflicts or concerns with the employment of "citizen soldiers" and their requirement to perform military duty. Try to resolve them as soon as they arise. Discuss with your employees their service requirements before problem situations arise, and keep an open dialogue to prevent them.
- Seek assistance from your ESGR Committee or from the National ESGR Headquarters (1-800-336-4590). Ask to speak with an ombudsman. Ombudsmen serve as confidential, neutral liaisons for employers and employees who seek assistance or clarification regarding their rights and responsibilities. More than 95% of the calls they receive are resolved to the satisfaction of everyone involved. ESGR ombudsmen work closely with the Veteran's Employment and Training Service/Department of Labor and will refer you to them if formal assistance is needed.
- Don't hesitate to call upon your employees' military commander or supervisor if you have a conflict. They face some of the same challenges you do in their "business" and know that it is in everyone's best interest to work together. Usually, they can offer alternatives to meet individual needs. By taking a more active role in supporting the members of the National Guard and Reserve that work for you, you'll improve the quality of life for all your employees, you'll directly enhance the success of your organization, and you'll provide an invaluable service to the nation.

USERRA FAQs for Employers

1. Is an employee protected from unlawful discrimination by an employer based on military affiliation?

Yes. USERRA provides protections for initial hiring and adverse employment actions by an employer if the action is motivated even in part by the employee's military service. This protection also extends to witnesses who assist or testify in a USERRA investigation.

2. Can an employer refuse to allow an employee to attend scheduled drills or annual training?

No. Employees must be excused from work to attend inactive duty training (drill) or annual training and the employer must reemploy the employee as if he or she has not been absent.

3. Is there a limit to the amount of military leave an employer must permit?

Yes. However, there is no longer any differentiation between voluntary and involuntary military duty, there is a 5-year cumulative service limit on the amount of voluntary military leave an employee can use and still retain reemployment rights.

4. What is not included in the 5-year cumulative total?

The 5-year total does not include: inactive duty training (drills); annual training; involuntary recall to or retention on active duty; voluntary or involuntary active duty in support of a war, national emergency, or certain operational missions; or additional training requirements determined and certified in writing by the Service Secretary, and considered to be necessary for professional development or for completion of skill training or retraining.

5. Is prior notice to the employer required for leave of absence for military duty?

Yes. Unless precluded by military necessity, advance notice must be provided either orally or in writing. The context for what constitutes timeliness of notification was not spelled out. However, employees who participate in the National Guard or Reserve should provide their employers as much advance notice as possible. Failure to provide notice could result in a denial of the protection of USERRA.

6. What are valid military orders?

All written or verbal orders are considered valid when issued by competent military authority. A military member in receipt of official orders is obligated by federal statute to execute them. The recurring requirement to perform inactive duty training (drill) is an example of when written orders may not be formally issued.

7. When may an employer require an employee to provide documentation of military service?

After periods of military leave of absence for more than 30 days, the employer has the right to request such documentation, which can be used to establish the employee's basic eligibility for protection under USERRA. All National Guard and Reserve members are encouraged to provide a copy of orders, the annual drill schedule, or other type of documentation to employers as soon as available and, if possible, before the commencement of military duty.

8. What if the employee cannot provide satisfactory documentation for military service in excess of 30 days?

The employer must promptly reinstate the employee pending its availability. The employer may contact the military unit if necessary.

9. Can an employer require an employee to apply for military leave of absence or otherwise submit official documentation for approval of military leave of absence?

No. As stated previously, an employer may not require documentation for notification prior to military duty. Further, an employer does not have a "right of refusal" for military leave of absence, so long as the employee has not exceeded the 5 years of cumulative service provided under USERRA.

10. Can an employee be required to find someone to cover his or her work period when military duty interrupts the work schedule?

No, an employee is responsible for notification but not for altering the work schedule or finding a replacement.

11. Can an employer require an employee to reschedule drills, annual training, or any other military duty obligation?

No. When military duties would require an employee to be absent from work for an extended period, during times of acute need, or when (in light of previous leaves) the requested military leave is cumulatively burdensome, the employer may contact the military commander of the employee's military unit to determine if the duty could be rescheduled or performed by another member. If the military commander determines that the military duty cannot be rescheduled or canceled, the employer is required to permit the employee to perform his or her military duty.

12. Is an employer required to pay an employee who is on military leave of absence?

No. While many employers offer differential pay or a specific number of paid military leave days, an employer is not required to pay an employee on military leave of absence.

13. Are there time limits for an employee to return to work after completion of military duty?

Yes. There are three formats for reinstatement (application for reemployment), dependent on the duration of military service. Please refer to question 15 for a detailed breakdown of these formats. An employer should reinstate an employee within a matter of days of application, if not on the same day as the application is made.

14. After completion of weekend drill, what is the time limit for an employee to return to work?

The beginning of the next regularly scheduled work period on the first full day following completion of service and expiration of an 8-hour rest period following safe transportation home. For example, an employer cannot require a service member who returns home at 10 p.m. to report to work 2.5 hours later at 12:30 a.m. However, the employer can require the employee to report for the 6 a.m. shift, or scheduled work period, the next morning (after reasonable commute from military duty to home followed by 8-hours). Included in the 8 hour period is time for rest and the commute to work.

15. What is the time limit for an employee to return to work after Annual Training or other types of extended military leave of absence?

Time limits for returning to work depend on the duration of the orders. The rules are:

- Service of 1 to 30 days: the beginning of the next regularly scheduled work period on the first full day following completion of service and expiration of an 8-hour rest period following safe transportation home.
- Service of 31 to 180 days: application for reinstatement must be submitted not later than 14 days after completion of military duty.

- Service of 181 or more days: application for reinstatement must be submitted not later than 90 days after completion of military duty.

16. What if the employee has an accident, is delayed by lack of military transportation, or is otherwise unable to report back in a timely manner?

The employee must report back to work as soon as possible. Unless the delay is through no fault of the employee, he or she is subject to the personnel policies and practices the employer would normally apply to employees with unexcused absences.

17. What if an employee is injured or incurs a disability during military duty?

The deadline for reinstatement may be extended for up to 2 years for persons who are convalescing due to a disability incurred or aggravated during military service, and employers must make reasonable accommodations for the impairment.

18. What job position is an employee returned to after military leave of absence?

Except with respect to persons whose disability occurred in or was aggravated by military service, the position into which an employee is reinstated is determined by priority, based on the length of military service. The rules are:

- Service of 1 to 90 days: (a) in the job the person would have held had he or she remained continuously employed (possibly a promoted position), so long as the person is qualified for the job or can become qualified after reasonable efforts by the employer, or (b), if the person cannot become qualified, in the position the person was employed on the date of the commencement of the military service.
- Service of 91 or more days: (a) same as for service of 1 to 90 days, or a position of like seniority, status and pay, so long as he or she is qualified, or (b) if the person

cannot become qualified, in the position the person was employed on the date of the commencement of the military service or which nearly approximates that position.

Note: The reemployment position with the highest priority reflects the "escalator" principle, which requires that a returning service member steps back onto the seniority escalator at the point the person would have occupied if the person had remained continuously employed. USERRA specifies that returning employees must be "promptly reemployed." What is prompt will depend on individual circumstances. Reinstatement after 3 years on active duty might require two weeks to allow giving notice to an incumbent employee who might have to vacate the position.

A Smooth Transition For National Guard And Reserve Members: Avoiding Job Conflicts

Most conflicts can be avoided by being open with your employer about your obligations as a member of a Reserve component. Don't take your employer's support for granted. Keep your supervisor informed about what you do in the military and when you do it. Let him or her know the vital mission that is supported by your participation in the National Guard or Reserve. Let her or him know how your military experience and training will make you a more valuable employee. Take time to comprehend the sacrifice your boss and co-workers make when they support you.

Talk to your boss. No matter what your military assignment or specialty, let your employer know about it. Many people hold down military jobs that relate directly to their civilian careers. If yours is one of them, your boss would be pleased to know that you are learning and practicing military skills that can pay off on the job. Even if what you do in the military is different from your civilian job, sharing the details can impress your boss. The soft skills that you develop while being in the military makes you a better employee. At the same time you are using your spare time to participate in a second career that is of great importance to your community and the nation. That is a strong indication to people at work that you are the type of person who seeks-out and can handle-serious responsibility.

Federal Law. Experience has shown that members of the National Guard and Reserve, as well as their employers, do not always have a clear understanding about employment and reemployment rights for Reserve component members. Federal law guarantees the right to take time off from work to attend to your military responsibilities. The more that you, your boss, and your personnel office know about the federal laws and legal precedents that spell out Reserve reemployment rights, rules and obligations protected by the laws, the less chance there is for misunderstanding. The details of USERRA's provisions are discussed in some detail in preceding pages.

Drill Schedules. Don't make your boss guess about your National Guard or Reserve duties. The more you share with the boss and the earlier you share it the better. Such as: drill schedules, annual training plans, reemployment rights and rules, and any extra time-off requirements. Many units meet on the same weekend of each month, with exceptions for holidays or when scheduled annual training intervenes. If your unit follows this pattern, let your employer know. Remember, you must give your employer advance notice of any military service, including drills. Let your boss know as early as possible when you will be absent from work. When schedule changes occur, notify the employer as soon as you know about them.

Annual Training Schedules. The same rules apply for Annual Training (AT). Most units schedule their AT months in advance - that is the time to provide notification to the employer. A change in orders can be more easily handled than an unplanned absence. If you are going to be on an advance party, or if your AT will exceed the traditional two weeks, make sure your employer knows about it well in advance.

Extra training. When you or your unit needs additional training, or you are scheduled to attend a service school, let the boss know about it. Giving employers the maximum lead-time enables them to make plans to accommodate your absence. To the extent that you have control over the scheduling of additional training, try to minimize any adverse impact your absence will cause from the civilian job. Show consideration for your boss and your co-workers when you volunteer for nonessential training.

Non-Training Active Duty. Many Reserve component members perform tours of active duty that are not for training. This can range from short active duty tours, to support exercises or work on special projects, to years of active duty in the Active Guard Reserve (AGR) or similar programs. Again, under USERRA, prior notice of this type of duty must be given to your employer. Remember, that most duty of this type is subject to a cumulative 5-year time limit after which you no longer have reemployment rights under USERRA with a given employer.

Emergency/contingency duty. Many Reserve component members have served on active duty in support of such operations as the Persian Gulf conflict. When you have been activated involuntarily for a particular mission, your period of service will not count against the cumulative 5-year limit established under USERRA. In most cases, voluntary duty will also be exempt from the 5-year limit if it is in direct support of a contingency operation.

Scheduling. If you miss work while you perform military service, your employer is not obligated to reschedule you to make up the time lost. However, if employees who miss work for nonmilitary reasons are afforded opportunities to make up the time lost, you must be treated in the same manner. Further, you cannot be required to find a replacement worker for the shift(s) you will miss as a condition of being given the time off by your employer to perform military service.

Vacation. Federal law allows you the option to use earned vacation while performing military service, but you cannot be required to do so. The only case where you could be required to use your vacation would be if your company has a planned shutdown period when everyone must take vacation, and your military service coincides with that period of time.

Vacation Accrual. Your employer is not required to provide for vacation accrual while you are absent from work performing military service, unless accrual is permitted for employees on nonmilitary leave of absence of similar length.

Pay. Although some private and many government employers provide full or partial civilian pay to employees absent on military duty-usually for a limited period of time-the law requires only an unpaid leave of absence.

Federal Employee Paid Military Leave. Federal employees are entitled to time off at full pay for certain types of active or inactive duty in the National Guard or as a Reserve of the Armed Forces. More information is available from the Office of Personnel Management site at: <http://www.opm.gov/oca/leave/html/military.htm>.

National Guard and Reserve Members that are Students. Currently, federal law does not guarantee equal rights and protections across the country to members of the National Guard and Reserve who are enrolled in schools, colleges and universities. Student members of the National Guard and Reserve are not guaranteed refunds of tuition and fees paid for the term they cannot complete. There are no provisions for partial course credit, or the right to return to the college or university upon completion of active service. However, help is on the way. The Service members Opportunity Colleges (SOC) organization is prepared to intercede for members experiencing problems, such as loss of credit in school courses due to call-up. If a student called to active duty is experiencing problems related to course credit, tuition, fees or re-enrollment in a program of study, he/she can call, toll free, 1-800-368-5622, or write to: Service members Opportunity Colleges, 1 DuPont Circle, NW, Suite 680, Washington, DC 20036. A representative from SOC will work with the student soldier and the institution involved resolving the issue. Unit commanders with members experiencing such problems are urged to make every effort to ensure these members know this help is available.

Reward the Boss for Supporting Your Service. The Department of Defense will send your boss - through your unit commander - a personally prepared certificate of appreciation if you, the National Guard or Reserve member, just apply for it. The certificate comes mounted in a handsome folder, bearing the DoD seal embossed in gold. Take time to do your best to "brag" about your boss. The stronger your boss's support (as shown in the application), the greater the likelihood that he or she will also receive a higher award. Each ESGR Committee (one in each state, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands) presents plaques to their six most supportive employers each year. The ESGR National Headquarters sponsors the prestigious PRO PATRIA award, presented each year by each ESGR Committee to their single most supportive employer. The Secretary of Defense presents the highest awards, the Employer Support Freedom Award, to the most outstanding employers for the year-one national winner and four regional semifinalists. Applications can be

obtained from your unit ESGR representative, any member of your ESGR Committee, the Web site, www.esgr.org or by calling ESGR directly, 1-800-336-4590. Take advantage of unit and ESGR programs and services to help you explain to your employer the vital role of the National Guard and Reserve in the National Military Strategy.

Inform you employer and your community about the impact of the military on the local economy. Work with your leadership to publish an annual financial report. Let the community know what your unit and others in the region contribute to the local economy through salaries, construction, and local purchases. Encourage your Public Affairs offices to develop and distribute press releases to local papers and television stations whenever events or actions occur that stimulate the economy. Visit <http://web1.whs.osd.mil/mmid/pubs.htm> for statistical information on the military in your state.

Be active in the community. Make the unit a live, vital element in the community. Cooperate in community affairs and work on supportive projects whenever possible within the military mission and you will see increased employer and community support.

USERRA FAQs for Service Members

1. Is an employee protected from unlawful discrimination by an employer due to military affiliation?

Yes. USERRA provides protections for initial hiring and adverse employment actions by an employer if the actions relate, even in part, to the employee's military service. This protection also extends to potential witnesses of a discriminatory action on the part of the employer.

2. What are the basic eligibility requirements for job protection under USERRA?

To be protected, a National Guard or Reserve member must have a civilian job, must provide timely notification to the employer of military duty, and must report back to work for reemployment in a timely manner. Reemployment rights are provided even if the civilian job is described as "temporary," unless the employment was for a brief period with no reasonable expectation of continuance for a significant period of time.

3. Is there a limit to the amount of active duty an employee can perform and still have reemployment rights?

Yes, there is a 5-year cumulative total of military service an employer is required to support. Not included in that total are: involuntary recall to active duty, drills (inactive duty training), annual training, and additional training requirements determined and certified in writing by the Service Secretary concerned to be necessary for professional development or for completion of skill training or retraining.

4. Does USERRA apply to "state" military duty or governor call-ups of National Guard members?

No. However, protection for such duty is generally provided by state statutes and in most instances is comparable to protections provided under the USERRA.

5. When should an employee provide notification of upcoming duty?

Written or oral notification must be made to employers prior to going on duty, unless precluded by military necessity. Employees are highly encouraged to notify their employer of any anticipated military activity, when application for orders is made, or if notified of possible involuntary recall. Employees should be sensitive to employer scheduling requirements when providing notification and when submitting application to the unit commander for orders. Where possible, an employee should submit requests for orders during calendar periods outside of peak business seasons and not during the most popular vacation cycles.

6. Does an employee have reinstatement rights following voluntary military service?

Yes. There is no longer any differentiation between voluntary and involuntary orders under the USERRA, so long as the basic eligibility requirements are met.

7. What if an employee does not return in a timely manner to work?

The employee is subject to the personnel policies and practices of the employer for unexcused absences.

8. How does military service affect employee status or seniority in the workplace?

An employee must be considered not to have been absent from the workplace if the only reason for that absence was service in a uniformed service. A returning employee must be made "whole" by:

- being allowed to contribute to the pension plan any amount that would have been contributed had the employee not been absent
- being reinstated with privileges and status the employee earned by length of service (for example, after 3 years

with a company an employee may be entitled to accrue more vacation per year, or after 5 years an employee is automatically advanced to a management position.)

9. What are the rules on contribution to the pension or thrift savings plan for periods of military leave of absence?

Upon reemployment, the employee has 3 times the length of service (not to exceed 5 years) to make payments and the employer is liable to fund any resulting obligation of the plan within the same time frame.

10. Can an employee contribute to the pension plan when on military leave of absence?

There is no burden under the law for an employer to continue pension contributions while the employee is away from the work site. An employer may choose to offer this benefit.

11. What are the rules for entitlement to health insurance?

For absence of less than 30 days, benefits continue as if the employee has not been absent.

For absence of 31 days or more, coverage stops unless the employee elects to pay for cobra-like coverage (for a period of up to 18 months). Health insurance must be reinstated the day an employee is reinstated with no waiting period.

12. Does an employee accrue vacation or medical/sick days from the employer while on military leave of absence?

No. However, as in the previous question, an employer may choose to offer accrual of vacation or medical/sick days as an additional benefit. An employer is not required under USERRA to provide any paid benefit when an employee is not working at the worksite.

13. Does an employee have the right to make up periods of work missed due to drill or military leave of absence?

No. An employer may choose to offer an employee the opportunity to work hours missed as a benefit not provided under the USERRA. For example, an employer is not required to provide hours of work for an average 2-week, 80-hour period if part of that period is missed due to military service.

14. After completion of weekend drill, what is the time limit for an employee to return to work?

Either the beginning of the next regularly scheduled work day or during that portion of the next regularly scheduled shift that would fall eight hours after the end of drill and a reasonable amount of time to commute home. For example, an employer cannot require a service member who returns home at 10 p.m. to report to work 2.5 hours later at 12:30 a.m. However, the employer can require the employee to report for the 6 a.m. shift, or scheduled work period, the next morning (after reasonable commute from military duty to home followed by 8-hours). Included in the 8 hour period is time for rest and the commute to work.

15. What is the time limit for an employee to return to work after Annual Training or other types of extended military leave of absence?

Time limits for returning to work depend on the duration of the orders. The rules are:

- Service of 1 to 30 days: the beginning of the first regularly scheduled work day or 8 hours after the end of the military duty, plus reasonable commuting time from the military duty station to home.
- Service of 31 to 180 days: application for reinstatement must be submitted not later than 14 days after completion of military duty.
- Service of 181 or more days: application for reinstatement must be submitted not later than 90 days after completion of military duty.

16. What if the employee has an accident, is delayed by lack of military transportation, or is otherwise unable to report back in a timely manner?

The employee must report back to work as soon as possible. If the reason for the employee's delay is not related to military duties, the employee is subject to the personnel policies and practices the employer would normally apply to employees with unexcused absences.

17. What if an employee is injured or incurs a disability during military duty?

The deadline for reinstatement may be extended for up to 2 years for persons who are convalescing due to a disability incurred or aggravated during military service, and employers must make reasonable accommodations for the impairment.

18. What job position is an employee returned to after military leave of absence?

Except with respect to persons whose disability occurred in or was aggravated by military service, the position into which an employee is reinstated is determined by priority, based on the length of military service. The rules are:

- Service of 1 to 90 days: (a) in the job the person would have held had he or she remained continuously employed (possibly a promoted position), so long as the person is qualified for the job or can become qualified after reasonable efforts by the employer, or (b), if the person cannot become qualified, in the position the person was employed on the date of the commencement of the military service.
- Service of 91 or more days: (a) same as for service of 1 to 90 days, or a position of like seniority, status and pay, so long as he or she is qualified, or (b) if the person cannot become qualified, in the position the person was employed on the date of the commencement of the military service or which nearly approximates that position.

Note: The reemployment position with the highest priority reflects the "escalator" principle, which requires that a returning service member steps back onto the seniority escalator at the point the person would have occupied if the person had remained continuously employed.

19. Where do I go for information or assistance?

Even with the best of communication and partnership between employers and their employees that are members of the National Guard or Reserve, questions and concerns do arise related to the adverse consequences of military service. How should you handle them?

- For members of the National Guard or Reserve, your first approach should be to go to your employer. Most often, a calm, objective discussion can lead to an acceptable solution if it is conducted in an atmosphere of mutual respect and cooperation.
- If you can't come up with a workable solution, go to your unit commander for advice and support. Even with their focus on mission accomplishment, commanders have a vested, long-range interest in their people. It's best for the unit to resolve your problem. They may be able to better explain the situation to you and your employer. A lot of times, they can suggest compromises or alternatives that will satisfy everyone's needs.

Employment Rights And Benefits Of Federal Civilian Employees Who Perform Active Military Duty

Civilian Federal employees who are members of the Uniformed Services and who are called to active duty (or volunteer for active duty) are entitled to the following rights and benefits:

1. EMPLOYEE ASSISTANCE PROGRAMS (EAPs).

Employee Assistance Programs can be very helpful to employees and their families in coping with the stress and disruption associated with a call to active military duty. EAPs provide short-term counseling and referral services to help with financial, emotional, and dependent care problems. These services are available to employees who have been called to active military duty (or who volunteer for such duty) and to employees who are family members of those who are performing active military duty. In addition, many EAPs offer services to family members of employees.

2. PAY. Employees performing active military duty will receive compensation from the Armed Forces in accordance with the terms and conditions of their military enlistment or commission. They will not receive any compensation from their civilian employing agency unless they elect to use military leave or annual leave as described below. As usual, agencies should continue the payment of availability pay for criminal investigators and annual premium pay for administratively uncontrollable overtime (AUO) work, or regularly scheduled standby duty, on days of military leave or annual leave.

3. MILITARY LEAVE, Employees who perform active military duty may request paid military leave, as specified in 5 U.S.C. 6323(a).

- Under the law, an eligible full-time employee accrues 15 days (120 hours) of military leave each fiscal year. In addition, an employee may carry over up to 15 days (120 hours) of unused military leave from one fiscal year to the next. When the 15 days of military leave that are carried over are combined with the 15 days

of military leave accrued at the beginning of the new fiscal year, this produces a maximum military leave benefit of 30 days in a fiscal year. However, since an employee cannot carry over more than 15 calendar days to the next fiscal year, any unused military leave in excess of 15 days will be forfeited at the beginning of the next fiscal year.

- Part-time career employees accrue military leave on a prorated basis. Employees who elect to use military leave will receive full compensation from their civilian position for each hour charged to military leave, in addition to their military pay for the same period. We remind agencies that 5 U.S.C. 6323 was amended in 2001 to require charges for military leave to be made on an hour for hour basis for all hours the employee would have worked. This does not apply to employees of the United States Postal Service. Additional information on charging military leave can be found in OPM's memorandum of January 25, 2001, at OPM's website at <http://www.opm.gov/oca/compmemo/2001/2001-02.htm>.
- Employees who perform active military duty may be granted an additional 22 days of military leave under 5 U.S.C. 6323(b) if such leave is granted for the purpose of providing military aid to assist domestic civilian authorities to enforce the law or protect life and property.

4. **ANNUAL LEAVE.** Employees who perform active military duty may request the use of accrued and accumulated annual leave to their credit (under 5 U.S.C. 6303 and 6304), and such requests must be granted by the agency. Requests for advanced annual leave may be granted at the agency's discretion. Employees who use annual leave will receive compensation from their civilian position for all hours charged to annual leave in addition to their military pay for the same period.

5. **LEAVE WITHOUT PAY (LWOP).** The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) generally requires an agency to place an employee entering the military on LWOP unless the employee chooses to be placed on military leave or annual leave, as appropriate, or the employee requests to be separated.

- Full-time employees do not earn annual or sick leave in a pay period in which they have accumulated 80 hours of LWOP.
- Part-time employees on LWOP also earn less annual and sick leave, since they earn leave based on the number of hours in a pay status.

6. **LUMP-SUM LEAVE PAYMENTS.** Employees who enter into active military duty may choose to:

(1) have their annual leave remain to their credit until they return to their civilian position;

(2) receive a lump-sum payment for all accrued and accumulated annual leave. However, an agency must make a lump-sum payment for any restored annual leave under 5 U.S.C. 6304(d). There is no requirement to separate from a civilian position in order to receive a lump-sum leave payment under 5 U.S.C. 5552.

Return to Active Federal Service. When an employee who has been on military duty returns to active Federal service prior to the end of the period covered by the lump-sum payment, the employee must refund an amount equal to the pay that covers the period between the date of reemployment and the expiration of the lump-sum leave period. Agencies may not recredit any restored annual leave to the employee's leave account. Further guidance on the repayment of a lump-sum payment for annual leave can be found at <http://www.opm.gov/oca/leave/html/lumpsum.pdf>.

7. **HEALTH BENEFITS.** Employees who are put in a non-pay status or separated while on military duty may keep their Federal Employees Health Benefits (FEHB) coverage for up to 18 months from the date the absence to serve on military duty begins.

- During the first 365 days, they are responsible for the employee share of the premium; they can either pay on a current basis or repay it when they return to active Federal service, just as any other employee on non-pay status.
- During the remainder of the 18 months, they are responsible for both the employee and government share of the premium, plus a 2% administrative fee; these must be paid on a current basis.

Federal agencies have discretionary authority to pay both the employee and Government shares of the premium for employees who are called to active military duty in support of a contingency operation (5 U.S.C. 8906(e) as amended by sec. 519, Public Law 107-107). Department of Defense (DoD) agencies should contact their DoD Headquarters health benefits officer for information specific to them <http://www.opm.gov/insure/handbook/fehb00.asp>.

8. **Termination.** FEHB coverage terminates at the end of 18 months. Employees get a free 31-day extension of coverage during which they can convert to a non-group policy. (They are not eligible for Temporary Continuation of Coverage (TCC).) An employee who does not want to continue FEHB while on military duty may elect in writing to have the coverage terminated. **Employees participating in premium conversion who want to terminate FEHB may do so only within 60 days of beginning their leave of absence (as this is a qualifying life event (QLE)), or during an annual open season.**

Employees who prefer to have the option of terminating coverage at a later date must waive premium conversion participation within 60 days of this QLE or during an annual open season, since only those who do not participate in premium conversion may terminate FEHB at any time. Additional information on FEHB coverage and military service

may be found at www.opm.gov/insure/health/qa/reservists.asp.

9. Return to Active Federal Service. The FEHB enrollment of an employee whose enrollment was terminated during military service is automatically reinstated when the employee is restored to a civilian position under the provisions of 5 CFR Part 353. However, if the employee waives his/her rights to immediate reinstatement of FEHB to take advantage of transitional TRICARE benefits, agencies may delay reinstatement until the transitional TRICARE ends. (Section 736 of the 2002 Defense Authorization Act provides for transitional TRICARE for up to 120 days.) The employee may make any changes to his enrollment or premium conversion participation within 60 days of reinstatement of the enrollment.

Employees who return to their civilian positions but are not restored under the provisions of 5 CFR Part 353, may enroll within 60 days of returning to civilian service provided the position is not excluded from FEHB coverage. FEHB Handbook information for employees who enter military service can be found at www.opm.gov/insure/health/handbook.

10. LIFE INSURANCE. Employees who are put in a non-pay status while on military duty can keep their Federal Employees' Group Life Insurance (FEGLI) coverage for up to 12 months. This coverage is free. However at the end of 12 months in non-pay status, the coverage terminates. Employees get a free 31-day extension of coverage and have the right to convert to a non-group policy.

Employees who separate from service while on military duty are considered to be in a non-pay status for FEGLI purposes. These individuals also can keep their FEGLI coverage for up to 12 months, or until 90 days after their military service ends, whichever date comes first. This coverage is free. Again at the end of 12 months (or 90 days after military service ends), the coverage terminates. These individuals also get the 31-day extension of coverage and the right to convert.

Being called up to active duty status or being sent to a combat zone does **NOT** cancel FEGLI coverage. Nor does it automatically make an employee ineligible for accidental death and dismemberment (AD&D) coverage. All FEGLI coverage remains in effect for the period of time described above.

If a Federal employee with FEGLI is called-up to active military duty and is killed, "regular" death benefits are payable to the employee's beneficiaries. Accidental death benefits are also payable under Basic insurance (and Option A, if the employee had that coverage) unless the employee was in actual combat (or unless nuclear weapons are being used) at the time of the injury that caused the employee's death. Accidental death benefits are ***in addition to*** regular death benefits. Even if accidental death benefits are not payable, regular death benefits ARE payable.

11. Return to Active Federal Service. When an employee who has been on military duty returns to active Federal service, he or she gets back whatever type(s) of life insurance he or she had prior to going into non-pay status (as long as the position is not excluded from coverage). The employee does not get an opportunity to elect more coverage unless he or she has been separated from service for at least 180 days.

12. RETIREMENT. An employee who is placed in an LWOP status while performing active military duty continues to be covered by the retirement law--i.e., the Civil Service Retirement System (CSRS) or the Federal Employees Retirement System (FERS).

- Death benefits will be paid as if the person were still in the civilian position.
- If the employee becomes disabled for their civilian position during the LWOP and has the minimum amount of civilian service necessary to be eligible for disability benefits (5 years for CSRS, 18 months for FERS), the employee will become entitled to disability benefits under the retirement law. Upon retirement from civilian service, the period of military service is creditable under either CSRS or FERS, subject to the rules for crediting military service.

- If an employee separates to enter active military duty, he or she generally will receive retirement credit for the period of separation when the employee exercises restoration rights to his or her civilian position.
- If the separated employee does not exercise the restoration right, but later re-enters Federal civilian service, the military service may be credited under the retirement system, subject to the rules governing credit for military service.

13. Thrift Savings Plan. For purposes of the Thrift Savings Plan (TSP), no contributions can be made, either by the agency or the employee, for any time in an LWOP status or for a period of separation. Agencies should refer to the Thrift Savings Plan Bulletin for Agency TSP Representatives, No. 01-22, dated May 3, 2001. For additional information, agency representatives may contact the Federal Retirement Thrift Investment Board at (202) 942-1460. Employees should refer to the TSP Fact Sheet - Effect of Non-pay Status on TSP Participation. Both issuances are available from the TSP Internet web site at <http://www.tsp.gov/forms/index-factsheets.html>.

If employees are subsequently reemployed in, or restored to, a position covered by FERS or CSRS pursuant to 38 U.S.C. chapter 43, they may make up missed contributions. FERS employees are entitled to receive retroactive Agency Automatic (1 percent) Contributions and, if they make up their own contributions, retroactive Agency Matching Contributions.

If FERS employees separate and their Agency Automatic (1 percent) Contributions and associated earnings are forfeited because they did not meet the TSP vesting requirement, the employees are entitled to have these funds restored to their accounts after they are reemployed.

If employees separate and their accounts are disbursed as automatic cash outs, the employees may return to the TSP an amount equal to the full amount of the payment after they are reemployed. For additional information see the TSP Fact Sheet -- Benefits that Apply to Members of the Military Who Return to Federal Civilian Service" at <http://www.tsp.gov/forms/index-factsheets.html>.

14. RETURN TO CIVILIAN DUTY. An employee, who enters active military duty (voluntarily or involuntarily) from any position, including a temporary position, has full job protection, provided he or she applies for reemployment within the following time limits:

(A) Employees who served less than 31 days must report back to work at the beginning of the next scheduled workday following their release from service and the expiration of 8 hours after a time for safe transportation back to the employee 's residence.

(B) Employees who served more than 30 days, but less than 181 days; must apply for reemployment within 14 days of release by the military.

(C) Employees who served more than 180 days have 90 days to apply for reemployment.

Employees who served less than 91 days must be restored to the position for which qualified that they would have attained had their employment not been interrupted. Employees who served more than 90 days have essentially the same rights, except that the agency has the option of placing an employee in a position for which qualified of like seniority, status, and pay.

Upon return or restoration, an employee generally is entitled to be treated as though he or she had never left for purposes of rights and benefits based upon length of service. This means that the employee must be considered for career ladder promotions, and the time spent in the military will be credited for seniority, successive within-grade increases, probation, career tenure, annual leave accrual rate, and severance pay.

An employee, who was on a temporary appointment serves out the remaining time, if any, left on the appointment. (The military activation period does not extend the civilian appointment.)

An employee performing active military duty is protected from reduction in force (RIF) and may not be discharged from employment for a period of 1 year following separation (6 months in the case of a Reservist called to active duty under 10 U.S.C. 12304 for more than 30 days, but less than 181 days, or ordered to an initial period of active duty for training of not less than 12 consecutive weeks), except for poor performance or conduct or for suitability reasons.

NOTE: Employees in the intelligence agencies have substantially the same rights, but are covered under agency regulations, rather than the Office of Personnel Management's regulations, and have different appeal rights.

15. APPEAL RIGHTS. An employee or former employee of an agency in the executive branch (including the U.S. Postal Service) who is entitled to restoration in connection with military duty may appeal an agency's failure to properly carry out the law directly to the Merit Systems Protection Board (MSPB), or the employee may first submit a complaint to the Department of Labor, which will attempt to resolve it. If a resolution is not possible, the Department may present the case to the **Office of the Special Counsel**, which may represent the employee in an appeal to the MSBP. Appeals to the Board must be submitted within 30 calendar days after the effective date of the action being appealed.

16. DOCUMENTING PERSONNEL ACTIONS.

Leave without Pay. LWOP must be documented on an SF 50, Notification of Personnel Action, with nature of action **473/LWOP-US** and legal authorities **Q3K/5 CFR 353** and **ZJW/Operation Enduring Freedom**. (Note: **ZJW** is a new legal authority that has been established to enable OPM and agencies to identify reservists who are involved in the effort under Operation Enduring Freedom). These same authorities

must also be used on the **292/RTD** action when the reservist returns to civilian employment.

Health Benefits and Life Insurance. For those reservists with health benefits coverage while absent for reasons related to military duty, enter in block 45 of the SF 50 remark **B66**.

Health benefits coverage will continue for 18 months unless you elect to terminate coverage. Contact your servicing Human Resources Office or see the FEHB Handbook at <http://www.opm.gov/insure> for detailed information. Reservists with Federal Employees' Group Life Insurance (FEGLI) coverage, enter in block 45 of the SF 50 remark **B72**.

FEGLI coverage continues until a reservist's time in non-pay status totals 12 months. Reservists should contact their servicing Human Resources Office or see the FEGLI Handbook at <http://www.opm.gov/insure> for detailed information.

Separations. If the reservist requests separation rather than LWOP, the separation must be documented with nature of action **353/Separation-US** and legal authorities **Q3K/5 CFR 353** and **ZJW/Operation Enduring Freedom**. Follow the instructions in Chapter 9 or 11 (as appropriate) of *The Guide to Processing Personnel Actions*, to document the reservist's restoration upon completion of his or her military service.

Updated February 2003

PREMIUM PAY FOR FEDERAL CIVILIAN EMPLOYEES WHO PERFORM EMERGENCY WORK IN SUPPORT OF THE NATIONAL EMERGENCY DECLARED BY PRESIDENTIAL PROCLAMATION OF SEPTEMBER 14, 2001.

The purpose of this attachment is to provide **updated** information about premium pay for civilian employees who perform emergency work in support of the National Emergency declared by the Presidential Proclamation of September 14, 2001.

Under 5 U.S.C. 5547(a) and 5 CFR 550.105, General Schedule employees and other covered employees, including law enforcement officers, may receive certain types of premium pay for a biweekly pay period only to the extent that the sum of basic pay and premium pay for the pay period does not exceed the **greater** of the **biweekly** rate for (1) GS-15, step 10 (including any applicable locality rate or special salary rate), or (2) level V of the Executive Schedule. Please refer to our biweekly premium pay limitation fact sheet at <http://www.opm.gov/oca/pay/HTML/03GSCap.asp> for further information and guidance.

Agencies are reminded of their authority under the law (5 U.S.C. 5547(b)) and OPM regulations (5 CFR 550.106) to make exception to the biweekly premium pay limitation. (Please note that overtime pay under the Fair Labor Standards Act of 1938, as amended, does not count toward this limitation.).

The head of an agency may apply an annual cap to certain types of premium pay for any pay period for:

- (1) employees performing work in connection with an emergency, including work performed in the aftermath of such an emergency
- (2) employees performing work critical to the mission of the agency. Such employees may receive certain types of premium pay only to the extent that the aggregate of basic pay and premium pay for the calendar year does not exceed the greater of the **annual** rate for
 - (a) GS-15, step 10 (including any applicable special salary rate or locality rate of pay);
 - (b) level V of the Executive Schedule. (Also see 5 CFR 550.107 for information on premium payments that remain subject to the biweekly limitation when other premium payments are limited to the annual limitation.)

VETERANS' REEMPLOYMENT RIGHTS (VRR)

EXPIRATION OF THE VRA APPOINTMENT AUTHORITY

The authority to noncompetitively appoint Vietnam era veterans under the Veterans' Readjustment Appointment authority expired on December 31, 1995, Vietnam era veterans who were released from active duty more than 10 years ago. The authority to appoint post-Vietnam era veterans and those Vietnam era veterans who were released from active duty within the past 10 years, and veterans with a 30 percent or more disability are not affected. We know of no plans by Congress to extend the authority at this time (see 38 U.S.C. 4214 (b)).

Who is Covered?

VRR applies to persons who were inducted into the Armed Forces, persons who volunteer directly for active duty and Reservists and members of the National Guard who are called to active duty either voluntarily or involuntarily. VRR covers members of the Reserves and National Guard during initial active duty training, active duty for training and inactive duty training.

Basic Provisions/Requirements:

Veterans returning from active duty must meet the following five eligibility requirements to be covered by VRR:

- Held an "other than temporary" (not necessarily "permanent") civilian job;
- Left the civilian job for the purpose of going on active duty Did not remain on active duty longer than 4 years, unless the period beyond 4 years (up to an additional year) was "at the request and for convenience of the Federal Government";
- Was discharged or released from active duty "under honorable conditions";

- Applied for reemployment with the pre-service employer or successor in interest within 90 days after separation from active duty;

Eligible veterans are entitled to reinstatement within a reasonable time to a position of like seniority, status and pay. The returning veterans do not step back on the seniority escalator at the point they stepped off. Rather the veterans step back on at the precise point that they would have occupied had they kept the position continuously during the military service.

VRR provides that a reservist or member of the National Guard shall upon request be granted a leave of absence by such person's employer to perform active duty training or inactive duty training and that the employee shall not be denied retention in employment or any promotion or other incident or advantage of employment because of any obligation as a member of a Reserve component of the Armed Forces. In addition, while the employer is not required to pay the Reservist or National Guard member for the hours or days not worked because of military training obligations, it is unlawful to require the employee to use earned vacation time for military training. A person who leaves a civilian job in order to perform active duty is not required to request a leave of absence or even to notify the employer that military service is the reason for leaving the job, however such a person is encouraged to provide the employer with as much information as possible. However, a Reservist or member of the National Guard must request a leave of absence when leaving the civilian job to perform active duty training or inactive duty training.

VRR is enforced by DOL's Veterans' Employment and Training Service (VETS).

Assistance Available

VETS have published two fact sheets covering the veteran reemployment and job rights. These are OASVET 90-09 entitled "Job Rights for Reservists and Members of the National Guard" and OAVET 90-10 entitled "Reemployment Rights for Returning Veterans." Copies of these and other VETS' publications or

answers to questions on VRR may be obtained from the nearest VETS office.

Relation to State, Local and Other Federal Laws

The VRR does not preempt state laws providing greater or additional rights, but it does preempt state laws providing lesser rights or imposing additional eligibility criteria.

Vet Readjustment Act

Special Appointing Authorities for Veterans, Veterans' Readjustment Appointment (VRA).

The VRA is a special authority by which agencies can, if they wish, appoint an eligible veteran without competition. The candidate does not have to be on a list of eligibles, but must meet the basic qualification requirements for the position. The VRA is a convenient method of appointment for both the agency and the veteran. The use of the authority is entirely discretionary and no one is entitled to a VRA appointment. VRA appointees initially are hired for a 2-year period. Successful completion of the 2-year VRA appointment leads to a permanent civil service appointment.

Service Requirements

You must have served on active duty for a period of more than 180 days which occurred after August 4, 1964 and received other than a dishonorable discharge. Active duty is full-time duty in the Armed Forces, other than active duty for training. You do not need to serve more than 180 days of active duty, if you were discharged or released from active duty because of a service-connected disability. Reserve and Guard members do not need to serve more than 180 days of active duty if:

(1) they were ordered to active duty under section 672(a), 672(d), 672(g), 673, or 673(b) of Title 10, and

(2) their active duty was during a period of war or in a campaign or expedition for which a campaign badge is authorized.

For VRA eligibility, the term "period of war" includes Desert Storm/Shield, beginning 08/02/90. No ending date has been set.

Time Limit

Eligible post-Vietnam era veterans qualify for 10 years after the date of your last discharge or release from active duty or until December 31, 1999, whichever is later.

Eligible Vietnam era veterans (those who served on active duty between August 5, 1964, and May 7, 1975) qualify until 10 years after your last discharge or separation from active duty or until December 31, 1995, whichever is later.

Eligible veterans with a service-connected disability of 30% or more have no time limit.

Training Requirement

If you were selected for a VRA and have less than 15 years of education, you must agree to participate in a training or educational program.

Grade Level of Jobs That Can be Filled

Agencies can use the VRA authority to fill white collar positions up through GS-11 and equivalent jobs under other pay systems.

Conditions of Employment

Veterans Readjustment Appointments are in the excepted service. After two years of substantially continuous service under a Veterans Readjustment Appointment, providing your performance has been satisfactory, your appointment shall be converted to the competitive service.

How to Apply

You should contact the Federal agency personnel office where you are interested in working to find out about VRA opportunities. Agencies recruit candidates and make VRA appointments directly.

For a list of local agency personnel offices consult your telephone directory under "U.S. Government" for the nearest location and telephone number.

30% OR MORE DISABLED VETERAN PROGRAM

Federal agencies have the authority, by law, to give noncompetitive appointments to any veteran who has a service-connected disability of 30% or more. Like the VRA, this authority is discretionary with the agency.

Who is Eligible?

To be eligible you must be a disabled veteran who has a compensable service-connected disability of 30 percent or more and the disability must be officially documented by the Department of Defense or the Department of Veterans Affairs.

- Grade Level of Jobs That Can be Filled - This authority covers all grade levels and occupations.
- Conditions of Employment -You must serve initially under a temporary appointment not limited to 60 days or less. After successfully performing on such a temporary appointment, the Federal agency may convert you to a permanent position.
- Conditions of Qualifications - You must meet all qualification requirements for any position to which you are appointed. This could include the requirement to achieve a passing score on a written test.

How to Apply

You should contact the Federal agency personnel office where you are interested in working to find out about opportunities. Agencies recruit candidates and make appointments directly. As a part of your application package, you will need a copy of a letter dated within the last 12 months from the Department of Veterans Affairs or the Department of Defense certifying receipt of compensation for a service-connected disability of 30% or more.

Soldiers' and Sailors' Civil Relief Act

I. INTRODUCTION

The Soldiers' and Sailors' Civil Relief Act (SSCRA), was passed by Congress to provide protection to persons entering or called to active duty in the U.S. Armed Forces. Reservists and members of the National Guard (when in active federal service) are also protected under the SSCRA. **The Protection begins on the date the soldier entered active duty service and terminates upon release from active duty.** However, some protections under the act extend for a limited time beyond discharge but are tied to the discharge date. Additionally, some of the Acts protections extend to the soldier's dependants.

A. Termination of Pre-Service Lease Agreements

1. A service member who is leasing/renting property used for dwelling, professional, business, agricultural or similar purposes may terminate a lease that was:

- a) signed before the service member entered active duty; and
- b) the lease/rented premises have been occupied for the above purposes by the service member or his/her dependants.

2. The service member must deliver written notice of termination to the landlord after entry on active duty or receipt of orders for active duty. The termination date for a month-to-month lease/rental is 30 days after the first date on which the next rental payment is due after the termination notice is delivered. For example, if rent is due on the 1st of the month and notice is delivered to the landlord on August 5th, the next rent due is September 1st. Therefore, the lease/rental agreement will terminate on October 1st.

3. For all other lease/rental agreements, the termination date will be the last day of the month after the month in which the notice was given. For example, if the term of the lease/rental agreement is yearly and notice was given August 5th, then the termination date will be September 30th.

4. If the rent has been paid in advance, then the landlord must return any unearned portion. The landlord may not withhold the refund of a service member's security deposit for early termination of the lease/rental agreement. However, the landlord may withhold return of the security deposit for damages, repairs, and other lawful provisions of the lease/rental agreement.

B. Evictions from leased housing

A service member may seek protection from eviction under SSCRA. The rented/leased property must be occupied by the service member or his/her dependents for the purpose of housing and the rent can not exceed \$1,200. The service member or dependent who has received notice of an eviction must submit a request to the court for protection under the SSCRA. If the court finds that the service member's military duties have materially affected his ability to pay his rent timely, the judge may order a stay, postponement, of the eviction proceeding for up to 3 months or make any other "just" order.

C. 6% Interest Rate

1. If a service member's military obligation has affected his/her ability to pay on financial obligations such as credit cards, loans, mortgages, etc., the service member can have his/her interest rate capped at 6% for the duration of the service member's military obligation.

2. Qualifying debts:

- a) Debts that were incurred prior to the service member coming on active duty;
- b) The service member must be on active duty at the time of the request;
- c) The service member's military career must have materially affected the service member's ability to pay on the debt;

- d) This provision does not apply to federally guaranteed student loans

3. How to implement the 6% cap. The service member should contact his/her creditor and request that his/her interest rate be reduced to 6% according to the provisions of the SSCRA. The creditor may request a copy of the service member's orders. The burden is on the creditor to seek relief in court if the creditor believes that the service member's military career does not materially affect his/her ability to pay.

D. Court Proceedings

1. A service member who is either the plaintiff or the defendant in a civil lawsuit may request a stay, postponement, of a court proceeding in which he/she is a party. A service member may request a stay at any point in the proceedings. However, courts are reluctant to grant stays at the pre-trial phase of a lawsuit, such as discovery, depositions, etc. If a judgment is entered against a service member who is unavailable due to military orders, the service member may be able to have that judgment voided.

2. Criteria:

- a) The service member must actually be a party to the suit.
- b) The provision only applies to civil lawsuits, suits for paternity, child custody suits, and bankruptcy debtor/credit meetings.
- c) The provision does not apply to:
 - i. administrative hearings;
 - ii. criminal proceedings;
 - iii. child support determination;
 - iv. proceedings in which the service member is merely a material witness to the lawsuit, but not an actual party; or
 - v. service member has leave available and has made no attempt to use his/her leave to attend the proceedings.

3. How to invoke a stay. A service member should have his commander write a letter to the court and the opposing party's attorney stating that the service member is unable to attend the proceedings. The soldier **should not** have an attorney draft such a letter to the court. A letter by an attorney could be considered an appearance by the service member and could subject the service member to the jurisdiction of the court.

E. Installment Contracts and Auto Leases

A service member or spouse may request protection under the SSCRA for pre-service debts incurred under installment contracts and auto leases. The service member or the spouse must prove that the service member's military obligations have materially affected his/her ability to pay on the debts. Also, at least one deposit or installment payment must have been made on the contract **prior to** entering active duty. If the contract falls under the protection of the SSCRA, the creditor is thereafter prohibited from exercising any right or option under the contract, such as to rescind or terminate the contract or to repossess the property, unless authorized by a court order.

F. Enforcement of Obligations, Liabilities, Taxes

A service member or dependent may, at any time during his/her military service, or within 6 months thereafter, apply to a court for relief of any obligation or liability incurred by the service member or dependent prior to active duty or in respect to any tax or assessment whether falling during or prior to the service member's active military service. The court may grant stays of enforcement during which time no fine or penalty can accrue.

Family and Medical Leave Act (FMLA)

1. What is the Family and Medical Leave Act?

FMLA is a Federal law that provides "qualifying" employees of a covered employer the right to take up to 12 weeks of unpaid, job-protected leave, during any 12 months, for the birth and care of a newborn, adoption or foster care, or a serious health condition of the employee or certain family members. An "eligible" employee is one who meets certain requirements specified in the statute. FMLA was enacted in 1993 and is codified at 29 U.S.C. § 2601 to § 2645 and 5 U.S.C. § 6381 to § 6387, relating to Federal civil service employees.

2. What are the leave eligibility provisions of the FMLA?

In order to be eligible for leave under the FMLA, employees must meet several eligibility criteria. Two of these criteria affected by USERRA are:

1) the person must have been employed by the employer for at least 12 months; and

2) the person must have worked at least 1250 hours for that employer during the 12 month period preceding the start of the leave. The requirement of 1250 hours worked applies to persons employed by private employers, state and local governments, and the Postal Service.

3. What effect does USERRA have on these requirements?

USERRA requires that the service members who conclude their tours of duty and who are reemployed by their civilian employers receive all benefits of employment that they would have obtained if they had been continuously employed, except those benefits that are considered a form of short term compensation, such as accrued paid vacation. If a service member had been continuously employed, one such benefit to which he or she might have been entitled is leave under the FMLA. The service member's eligibility will depend upon whether the service member would have met the eligibility

requirements outlined above had he or she not performed military service.

4. How should the 12-month FMLA requirement be calculated for returning service members?

USERRA requires that a person reemployed under its provisions be given credit for any months he or she would have been employed but for the military service in determining eligibility for FMLA leave. A person reemployed following military service should be given credit for the period of military service towards the months-of-employment eligibility requirement. Each month served performing military service counts as a month actively employed by the employer. For example, someone who has been employed by an employer for 9 months is ordered to active military service for 9 months after which he or she is reemployed. Upon reemployment, the person must be considered to have been employed by the employer for more than the required 12 months (9 months actually employed plus 9 months while serving in the military service) for purposes of FMLA eligibility. It should be noted that the 12 months of employment do not have to be consecutive to meet this FMLA requirement.

5. How should the 1250 hours-of-service requirement be calculated for returning service members?

An employee returning after military service should be credited with the hours-of-service that would have been performed but for the period of military service in determining FMLA eligibility. Accordingly, a person reemployed following military service has the hours that would have been worked for the employer added to any hours actually worked during the previous 12-month period to meet the 1250 hour requirement. In order to determine the hours that would have been worked during the period of military service, the employee's pre-service work schedule can generally be used for calculations. For example, an employee who works 40 hours per week for the employer

returns to employment following 20 weeks of military service and request leave under the FMLA. To determine the person's eligibility, the hours he or she worked during the period of military service ($20 \times 40 = 800$ hours) must be added to the hours actually worked during the 12-month period prior to the start of the leave to determine if the 1250-hour requirement is met.

USERRA - A Quick Look

Know who is affected	Military reserve personnel are required to give employers advanced notification of their service status either verbally or in writing. There is no requirement for how far in advance such notice must be provided. It is wise to canvas your employee base to be certain you are aware of all military reservists in the company.
Know your obligations	Become familiar with all aspects of USERRA provisions. Consult with all benefits providers including It is staff and the tools we have made available for this purpose.
Educate employees	Communicate with employees to be sure they fully understand all their rights <u>and</u> their options. Also, consider communicating with all employees so they understand what will happen in an employee's absence and upon their return.
Provide flexible options	Many military reservists will not have the luxury of time to put all affairs in order before going into active duty. Furthermore, they may need to make provisions for themselves and their families even after they leave. Be sure they have options available to them allowing for personal business to be conducted even after the commencement of their military duties.
Provide a smooth transition into military service	This can be a very hectic time for these employees, often with little planning time available. It is has created a guide specifically for plan participants in the uniformed services. Providing this guide and advice from other benefits providers can help to ensure that employees understand all their options before they go into active duty.
Provide a smooth transition back to a civilian livelihood	USERRA provides for the specific – yet flexible – timeframe in which reemployment must occur. Employers who lay the groundwork before an employee leaves for active duty will help to ensure his or her smooth return to civilian work life. Consult with all benefits providers.
Note: To qualify for USERRA, the employee must be honorably discharged.	

Reemployment Timing

USERRA addresses the timeframe to which employees must adhere when reporting back to work or submitting reemployment applications with their civilian employers. Normally, this is dependent upon the duration of your military service.

Less than 31 days:	Employees should return to work the first day following completion of their service period.
30 – 181 days:	Employees must submit reemployment applications within 14 days following completion of their service period.
Over 180 days:	Employees must submit reemployment applications within 90 days of completing their military service.

Upon receipt of reemployment applications, the employer must promptly reemploy these individuals.

USERRA further provides specific guidelines for the position(s) that employers must offer, including requirements if the employee suffers a disability as a result of their military duty. It also includes "escalator" provisions that allow the returning service member to return to the same level of seniority they had previous to the service period. Employers may **not** terminate these employees after reemployment, except for cause.

Going Above and Beyond

Certainly, the nation's uniformed services personnel go above and beyond the call of duty to their country. It is urged all plan sponsors to examine their ability – even during difficult economic times – to go beyond USERRA provisions to continue providing uninterrupted benefits to these employees. Military pay and benefits are minimal at best. Many of these reservists must still provide for their families even as they are away from home.

Retirement Plan Participant Practical Checklist

Of course, you will want to communicate with your employer regarding your status as a military service person. Then, it is important to take appropriate steps to prepare for your leave of absence if you have the ability to do so.

Before you go ...

Know <u>all</u> your rights	USERRA and SBJPA offer protection for your employee benefits, including reemployment. Consult the USERRA provisions included in this guide and ask your employer for information relevant to all your benefits, including healthcare and life insurance coverage, vacation time, compensation and seniority status.
Establish or update your will	No one likes to think about this, but it is very important to take care of all that you have worked for and to provide for those you love. Military lawyers are available to help with will preparation, but you should consider that they might be busy with many other duties. If you can utilize your own attorney before you go, it is highly recommended, particularly if you have a spouse, children and/or a sizeable estate. You should also see if your attorney suggests a power of attorney for your situation.
Review beneficiary designations	Carefully review the list of beneficiaries you have named for your retirement plan and other pertinent plans with survivors benefits. Be sure to provide any updates including change in marital status, the birth of a child, or changes of address. It is important to note that beneficiary designations are not governed by terms of a will. Each plan or insurance policy is considered to be "outside" the will and as such requires that specific beneficiaries be named with separate documentation.

Examine the asset allocation of your retirement plan	Diversified asset allocation is a sound investing strategy in any climate. The circumstances you now face demand even more prudent investing. Because you may not have the same accessibility to your retirement plan assets after the commencement of military duty, We encourage you to look at your current allocation. Consider an allocation that you would be comfortable with for the next two years ... with no adjustments to your portfolio. A "Timing the Market" strategy is never a good policy, especially during periods of uncertainty that include a restriction of access to your account. *
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While on military duty ...It is understandable that you may have many critical things on your mind as you prepare for active duty. If you do not have the opportunity or the time to make the changes you'd like before you go, you do have other options even after you've gone into military service.

Know <u>all</u> your options	If you have taken the appropriate steps, you can still conduct your personal business while you are in service. Should you find it necessary to reallocate your retirement plan asset allocation during this time; a designated person can utilize your PIN or power of attorney on your behalf.
You still have access to your account	You may or may not have Internet access while you are on your leave of absence for military duty. If you do, your account can still be accessed by logging in at www.It is .com . If you do not have Internet access, a person you designate can look in on your account and make any reallocations for you (e.g., a spouse or trusted adviser).
You still receive statements	During your leave of absence, quarterly retirement plan statements will continue to be sent to your home. Particularly during times of market volatility, you may wish to have someone monitor your account and its asset allocation on your behalf.

You still have access to a loan from your account	<u>Some</u> retirement plans allow for participant loans. Taking out a loan against your retirement plan is only a good idea as a last resort, but you may need to have access to your funds for the short term. Should this become necessary during your military service, you will likely still have the ability to take out a loan if this is a provision of your company plan. Consult your plan sponsor for proper procedures and required documentation. Remember, this should only be used as a last resort: retirement planning is a long-term proposition and time out of the market could hurt your ability to reach your retirement goals.
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When you return ...

Contact your employer	<p>You are required to contact your employer within a specific period of time as defined by your length of service during the military leave of absence. You must also apply for reemployment within the following timeframe after your service has ended:</p> <p>Service less than 31 days: the next day, plus at least 8 hours within returning to your residence</p> <ul style="list-style-type: none"> • Service 31 – 180 days: within 14 days • Service more than 180 days: within 90 days
Examine your retirement plan account	Whether or not you had access to your retirement account during your absence, it is a good idea to reevaluate your situation and make a proper asset allocation. Remember, you always have access to your information.

Consider your ability to make up any contributions	<p>If your plan permits employee contributions, it may be that you were not contributing to your retirement account while you were on duty unless your employer continued your compensation through this period. You have the right to immediately begin making new contributions to your plan. You also have the option of making up the contributions you missed while on military leave. In fact, you have three times the period of service (not to exceed five years) to make up the employee portion of your contributions that were missed. If your plan provides for matching contributions, your employer is required to also make any matching contributions on any of your make-up contributions. This does not count toward the maximum amount you and your employer are permitted to contribute for the tax year when these contributions commence. Rather, they are applied to the tax year for which the contributions were missed.</p>
Note provisions for repaying loans from the plan	<p>If you took out a new or pre-existing loan from your 401(k) or other retirement plan before or during your service, it is likely that your plan sponsor suspended the loan payment requirement while you were on military leave. Check with your plan sponsor to find out when payments must commence.</p>
Know your rights for <u>all</u> other benefits you have	<p>USERRA protects other benefits you have including life insurance and health coverage, vacation, seniority status, etc. Check with your plan sponsor about specific details concerning these employee benefits.</p>

USERRA Complaints

The Department of Labor is the enforcement authority for USERRA, and it processes all formal complaints of violations of the law.

USERRA authorizes OSC to investigate alleged violations of the act by **Federal Executive Agencies**, and to prosecute meritorious claims before the Merit Systems Protection Board on behalf of the aggrieved person.
Ref: 38 U.S.C. § 4301, et. seq.

What do I do if I believe my veterans' preference rights were violated?

You should file a complaint with the U.S. Department of Labor, Veterans Employment and Training Service.

The Veterans Employment Opportunities Act of 1998 (VEOA), 5 U.S.C. § 3330 et seq., created a new avenue of administrative redress specifically for a preference eligible who alleges that a federal agency violated such individual's rights under any statute or regulation relating to a veteran's preference eligible.

Under the VEOA, in order to seek corrective action, a preference eligible is to file a written complaint with the U.S. Department of Labor, Veterans Employment and Training Service (VETS), within 60 days of the alleged violation. VEOA requires the Secretary of Labor, through VETS, to investigate the complaint and, upon determining that a violation occurred, to attempt to resolve the complaint by making reasonable efforts to ensure that the agency complies with the statute or regulation relating to veteran's' preference. If the Secretary is unable to resolve a complaint **within 60 days**, the Secretary is to provide notification of an unsuccessful effort to resolve the complaint to the complainant.

Because of the VEOA, OSC does not investigate allegations of violations of veterans' preference rights for corrective action purposes. (OSC still investigate such allegations for possible disciplinary action, however.) Thus, you should file a complaint alleging a violation of a veterans' preference right with VETS, not OSC.

Filing a USERRA Complaint with OSC

OSC is not authorized to receive a USERRA complaint directly from the claimant.

- First file his/her complaint with the Department of Labor's Veterans' Employment and Training Service (VETS).
- If VETS is unsuccessful in resolving the complaint, the claimant may request that VETS refer the complaint to OSC.
- If the Special Counsel believes there is merit to the complaint, OSC will initiate an action before the Merit Systems Protection Board and appear on behalf of the claimant. The successful claimant is entitled to receive the employment benefits that he/she was denied as the result of the agency's violation of USERRA. Additionally, a prevailing claimant is entitled to attorney's fees, expert witness fees, and other litigation expenses.

The U.S. Office of Special Counsel (OSC) is an independent federal investigative and prosecutorial agency. Their basic authorities come from three federal statutes, the Civil Service Reform Act, the Whistleblower Protection Act, and the Hatch Act.

Disclosure Unit

OSC provides a secure channel through its Disclosure Unit for federal workers to disclose information about various workplace improprieties, including a violation of law, rule or regulation, gross mismanagement and waste of funds, abuse of authority, or a substantial danger to public health or safety.

Uniformed Services Employment and Reemployment Rights Act (Veterans' Rights)

OSC protects the reemployment rights of federal employees, military veterans and reservists under the Uniformed Services Employment and Reemployment Rights Act (USERRA).

Corrective action. The OSC may enter into discussions with an agency at any stage of a pending matter in pursuit of a resolution acceptable to all parties. The OSC follows a policy of early and firm negotiation to obtain appropriate corrective action (and/or disciplinary action) for apparent violations.

Intervention. The Special Counsel may intervene as a matter of right, or otherwise participate in most proceedings before the MSPB. The Special Counsel may not intervene in certain proceedings (individual rights of action brought under *5 U.S.C. §1221*, or matters otherwise appealable to the MSPB under *5 U.S.C. § 7701*) without the consent of the person initiating the proceeding.

Ref: 5 U.S.C. § 1212(c)

How can a person file a complaint of prohibited personnel practices or other prohibited employment activity with the OSC?

Filers must use Form OSC-11 (Complaint of Possible Prohibited Personnel Practice or Other Prohibited Activity) to submit allegations of prohibited personnel practices or other prohibited employment activity to OSC. Form OSC-11 may be printed from the Web site. The OSC will not process a complaint submitted in any format other than a completed Form OSC-11 (except for a complaint alleging *only* a Hatch Act violation).

Except for complaints alleging *only* a Hatch Act allegation, OSC will not process a complaint submitted in any format other than Form OSC-11. If a person uses any another format to file a complaint, the material received will be returned to the filer with a blank Form OSC-11 to complete and return to the OSC. The complaint will be considered to be filed on the date on which the OSC receives the completed Form OSC-11.

Complaints of prohibited personnel practices or other prohibited employment activities within the investigative authority of the OSC should be sent to the U.S. Office of Special Counsel, Complaints Examining Unit, 1730 M Street, NW, Suite 201, Washington, DC 20036-4505. Ref: 5 C.F.R. § 1800.1

Are federal employees required to cooperate with OSC investigations?

Title 5 of the U.S. Code authorizes the OSC to issue subpoenas for documents or the attendance and testimony of witnesses. During an investigation, the OSC may require employees and others to testify under oath, sign written statements, or respond formally to written questions.

Federal employees are also required to provide to the OSC any information, testimony, documents, and material, the disclosure of which is not otherwise prohibited by law or regulation, in investigations of matters under civil service law, rule, or regulation. The same rule requires federal agencies to make employees available to testify, on official time, and to provide pertinent records to the OSC. Ref: 5 U.S.C. § 1212(b); Civil Service Rule 5.4

What legal responsibilities do federal agencies have to prevent prohibited personnel practices?

Section 2302(c) of title 5 requires federal agency heads, and officials with delegated authority for any aspect of personnel management, to:

- prevent prohibited personnel practices, including reprisal for whistle blowing;
- comply with and enforce civil service laws, rules and regulations; and
- ensure (in consultation with the OSC) that federal employees are informed of their rights and remedies.

Answers to Frequently Asked Questions About the 2302(c) Program

Question: Is the program voluntary?

The program itself is voluntary but the requirement to inform agency employees of the rights and remedies available to them under the PPP and whistleblower provisions of Title 5 is a statutory obligation. The program provides a mechanism to meet this obligation. Moreover, the Office of Personnel Management recently announced that 2302(c) certification is a "suggested performance indicator" for 'getting to green' on the Strategic Management of Human Capital element of the President's Management Agenda.

Question: What are the consequences of failing to comply with the statutory obligation?

OSC will report annually to Congress federal agencies' participation with the 2302(c) program.

Question: How do I know if my agency is currently in compliance with 5 U.S.C. §2302(c)?

Call the OSC Director of Outreach at 202-653-8962 to discuss what outreach activities your agency is currently engaged in. She will inform you if your agency is in compliance.

Question: Once I register for the program, how will I know that my agency is in compliance with 5 U.S.C. §2302(c)?

If you have registered for the program, after completing the five requirements of the program, you will be asked to fill out a certificate of compliance form on the OSC web site. After OSC reviews the form, OSC will grant you a certificate of compliance indicating your conformity with 5 U.S.C. §2302(c).

Question: How often will agencies need to be certified as being in compliance with 5 U.S.C. §2302(c)?

Agencies need to be certified every three years.

Question: How often does an agency need to train supervisors on PPP's and the WPA?

Supervisors need to be trained every three years.

Question: How often do employees need to get notification of their rights and remedies under the WPA?

Employees need to get annual notification.

Question: Will this program generate frivolous complaints?

Agency-wide education programs have not resulted in a substantial increase in the number of complaints filed by employees of that agency.

Question: If an agency has employees that are not covered by all Title 5 provisions, will they need to comply with 5 U.S.C. §2302(c)?

Some agencies have federal employees that are only covered by a limited number of Title 5 provisions. If any provisions of the WPA cover these employees, the agency is responsible for informing the employees of their rights and responsibilities under the statute.

Resources

U.S. Department of Labor, <http://www.dol.gov>

U.S. Department of Labor Veterans Employment and Training Service (VETS), <http://www.dol.gov>

Employer Support of the Guard and Reserve,
<http://www.esgr.org>

U.S. Office of Personnel Management, <http://www.opm.gov>

U.S. Office of Special Council, <http://www.osc.gov>

invesmart, <http://www.invesmart.com>

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